

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

JIMMY RAHIAN AMIR BARBER,

Plaintiff,

v.

TIMOTHY C. WARD; WARDEN T.
BOBBITT; OFFICER OSBORNE; and SHIFT
MEDICAL STAFF,

Defendants.

CIVIL ACTION NO.: 6:22-cv-68

ORDER

This matter is before the Court on the October 5, 2022 Report and Recommendation and Plaintiff's Motions for Leave to Proceed *in Forma Pauperis*. Docs. 2, 5, 9. For the reasons which follow, I **VACATE** the Report and Recommendation and **DENY** Plaintiff's Motions.

I. The October 5, 2022 Report and Recommendation

On September 9, 2022, Plaintiff, proceeding pro se, filed a Complaint against Defendants, alleging his constitutional rights were violated while he was housed at Georgia State Prison in Reidsville, Georgia. Doc. 1. Plaintiff also filed a Motion for Leave to Proceed *in Forma Pauperis*. Doc. 2. The Court deferred ruling on Plaintiff's pauper motion, as Plaintiff did not use this Court's preferred form. Doc. 4. The Court directed the Clerk of Court to provide Plaintiff with a blank copy of this Court's preferred form, as well as a blank copy of a 42 U.S.C.

§ 1983 form.¹ Id. The Court advised Plaintiff his failure to comply with the Court's Order by returning the forms within 14 days would result in the dismissal of his cause of action. Id. at 2.

Plaintiff did not respond to this Court's Order and, on October 5, 2022, I issued a Report recommending the dismissal of Plaintiff's Complaint based on his failure to follow this Court's Order. Doc. 5. Plaintiff filed Objections to this Report and Recommendation, asserting he did not receive the Court's prior Order until October 5, 2022. Doc. 6. Plaintiff has now filed another Motion for Leave to Proceed *in Forma Pauperis*, as well as his Inmate Account Statement and his Amended Complaint. Docs. 7, 8, 9. Because Plaintiff has now complied with the Court's September 14, 2022 Order, I **VACATE** the October 5, 2022 Report and Recommendation.

II. Plaintiff's Motions for Leave to Proceed *in Forma Pauperis*

Plaintiff has submitted two Motions for Leave to Proceed *in Forma Pauperis* and his Inmate Account Statement. Docs. 2, 7, 9. "Historically, while a party need not be absolutely destitute in order to proceed *in forma pauperis* in federal court, pauper status has been denied to those bringing civil actions where they have adequate money to pay the filing fee." Order, Tobon v. Johns, 5:17-cv-117 (S.D. Ga. Sept. 15, 2017), ECF No. 9, p. 1 (quoting Henderson v. Kastner, Civil Action No. 08-167, 2008 WL 4844718, at *1 (E.D. Ky. Nov. 5, 2008) (denying *in forma pauperis* status to petitioner who had sufficient funds to pay filing fee)). Of course, in deciding whether to grant *in forma pauperis* status and excuse a party from paying a filing fee, the Court must consider the amount of the filing fee which, in this civil rights case, is \$402.00. 28 U.S.C. § 1914(a). "When considering a motion filed pursuant to § 1915(a), '[t]he only

¹ Despite the Court's directive, the Clerk of Court did not provide Plaintiff with the Court's preferred prisoner-plaintiff form. Doc 4 at 1; Doc. 4-2. This is of no moment, however, since Plaintiff filed his Inmate Account Statement, indicating the amount of money he has in his trust account. Doc. 7.

determination to be made by the court . . . is whether the statements in the affidavit satisfy the requirement of poverty.’’ Bailey v. McCalla Raymer LLC, No. 1:12-CV-0352, 2012 WL 12874286, at *1 (N.D. Ga. Feb. 3, 2012) (quoting Martinez v. Kristi Kleaners, Inc., 364 F.3d 1305, 1307 (11th Cir. 2004)), *report and recommendation rejected on other grounds*, 2012 WL 12871828 (N.D. Ga. Feb. 23, 2012). The Court has broad discretion to grant or deny an application to proceed *in forma pauperis*. Id. at 1306.

According to the information Plaintiff has provided the Court, he has an account balance of \$1,102.17 and has received \$1,407.68 in deposits since July 2022. Doc. 7 at 1. As a result, the Court **DENIES** Plaintiff’s Motions for Leave to Proceed *in Forma Pauperis*. Docs. 2, 9. Plaintiff shall have **21 days** from the date of this Order to pay the full filing fee. If the filing fee is not paid by that date, the Court will dismiss this action without prejudice. Local R. 4.2.

SO ORDERED, this 10th day of November, 2022.

A handwritten signature in blue ink, appearing to read 'B. Cheesbro', is written above a horizontal line.

BENJAMIN W. CHEESBRO
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA